Law and Environment: Syllabus

Legal Studies/Environmental Studies 430, Spring 2015

9:30 – 10:45 am, Tues.-Thur., Grainger 2270 Prof. Richard Keyser, rkeyser@wisc.edu

Office Hours: 11:30 am -12:30 pm, Tues.-Thur., Social Sciences 7131, and by appointment.

Description: This class explores environmental studies through a focus on law and legal history. Although its main concentration is on U.S. environmental law, the course will begin and end with broader historical and global perspectives. The first of three units of the class survey the English, European, and early American legal approaches to land use, natural resources, and pollution through World War II. A second unit examines the development and practice of contemporary U.S. environmental law. The final unit considers the recent emergence of international environmental law.

Grades: 20% for the midterm, 35% each for the final paper and the final exam; and 10% for attendance and participation (which may include some quizzes or short homework assignments, but these will not receive a numerical grade).

Attendance & Participation Assessment: Success in this class, as in most, is greatly favored by regular attendance and participation, and therefore I will keep track of them. But I do not assess attendance and participation quantitatively by assigning points. Instead, I assess these factors qualitatively and subjectively at my discretion (i.e., A-level, B-level, etc.) at the end of the semester. This is partly because I find that most students' attendance and participation correlates rather well with their performance on written work, and therefore worrying over a precise point system is not worth it. However, I do use my qualitative assessment of attendance and participation to adjust students' final grades in borderline cases, especially when a student contributes to class at a level above their performance on written work.

Attendance Guidelines: 1) you do not earn credit just for attending class, which is expected; 2) any more than THREE unexcused absences is excessive, because missing more than a bare minimum of classes is almost always correlated with misunderstanding of course materials and assignments; and 3) missing more than SIX classes without valid excuses may be grounds for failing the class; and 4) valid excuses are limited to university-recognized religious observances and for well-documented major illnesses or emergencies in the immediate family.

Participation: You should try to speak up often, and I will also try to call on students. But quality of contribution counts more than quantity. Quality contributions reflect your familiarity with the readings and your effort to ask good critical questions about them, such as: What are the main questions the author tries to answer? What is the author's main argument? What specific arguments, assumptions, or evidence are used in support? What is left out? Good participation also means that you listen to others and try to engage seriously but respectfully with what others say.

Computers and Electronic Devices: Due to the potential for distraction, these devices may <u>not</u> be used in class, except for students with documented disabilities.

Exams: The two exams will be comprehensive in their coverage, but will emphasize the broader ideas and themes of the course. The format will include some identification-type, shorter essays, as well as one or two longer essays.

Paper: The paper will be an essay of 8-10 pages based on a topic of your choosing (with some guidance), and will require that you both draw on the assigned readings and do some research beyond the class materials (how much will depend on your topic). Essays will be turned in both as paper copies in class, and as electronic copies to an anti-plagiarism website. Late papers will be marked down one grade per day late.

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Jan. 29. In order to maintain confidentiality, please let me know by coming to my office hours or by emailing me to arrange a meeting. You will need to provide documentation from the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741, email: mcburney@studentlife.wisc.edu.

Academic Honesty: Your written work must reflect your own ideas, and where you draw on others' words or ideas you need to indicate this clearly with proper quotations and citations. As the UW website explains, "plagiarism means presenting the words or ideas of others without giving credit. You should know the principles of plagiarism and the correct rules for citing sources…." For this and more information, see: http://students.wisc.edu/saja/misconduct/UWS14.html#overview . As this website notes, if you are unsure about the proper ways to give credit to sources, ask your instructor or consult the Writing Center at 6171 Helen C. White Hall (phone: 608/263-1992, e-mail: writing@wisc.edu). For a copy of their handout 'Acknowledging, Paraphrasing, and Quoting Sources,' please download: http://writing.wisc.edu/Handbook/Acknowledging_Sources.pdf .

Reading Assignments and Note-Taking: Ideally all reading assignments for each week should be completed by Tuesday's class so that you can make connections among the readings. If this is not possible, you may read the assignments in the order they appear on the syllabus. We will try to reserve time on Thursdays to discuss the primary sources (laws, judicial decisions, etc.). For best results, read each assignment carefully, take notes, and prepare a short summary of, response to, and critical questions provoked by it as a basis for class discussion (1-2 pages for each week's readings).

Required Course Pack (1) and Textbooks (3). The Course Pack may be purchased at the Social Sciences Copy Center (http://copy.ls.wisc.edu/), and the books at the UW Bookstore (http://text.uwbookstore.com/home.aspx) (please note that for the books you need the editions listed below). All four items are also on reserve at College Library. They are listed here in the order in which they will be assigned:

Keyser, Richard. *Course Pack for LS/ES 430, Law and the Environment*. Spring 2015.

Jacoby, Karl. *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*. Berkeley: University of California Press, 2001.

Klyza, Christopher M., & David J. Sousa. *American Environmental Policy Beyond Gridlock.* 2nd ed. Cambridge, MA: MIT Press, 2013.

Speth, James G., and Peter M. Haas. *Global Environmental Governance*. Washington: Island Press, 2006.

SCHEDULE

(Note: for some weeks, especially weeks 7-15, some short additional readings, mostly consisting of primary sources, may be assigned.)

I. Theory & History: Property, Commons, & Conservation in Europe & Early America to 1945

Week 1, Jan. 20-22. Introduction: Landed Property & the Commons.
- Course Pack: Elinor Ostrom, *Governing the Commons*, ch. 1, pp. 1-8; and ch. 3, pp. 58-102.
- Course Pack Primary Sources: Property Rights, Early Common Law, & Manorial Law (8 pp.).

Week 2, Jan. 27-29. Commons Governance in Traditional Agro-Ecosystems.
- Course Pack: de Moor et al., *Common Land in Northwest Europe*, 15-22, 59-81.
- Course Pack Primary Sources: Early Legal Texts on Forests & Commons (7 pp.).

Week 3, Feb. 3-5. Colonial America: Mercantilism, Enlightenment, & Settlement.
- Course Pack Primary Sources: Colonial America (8 pp.) & Mining Act of 1872 (3 pp.).
- Course Pack: Schorr, *Colorado Doctrine*, intro & ch. 1-2, pp. 1-64.

Week 4, Feb. 10-12. The 19th-Century Land Bonanza & Early Conservation.
- Course Pack: Schorr, *Colorado Doctrine*, ch. 3, pp. 64-75
- Jacoby, *Crimes Against Nature*, intro and ch. 1-2, pp. 1-47.

Week 5, Feb. 17-19. Conservation, Public Health, & the Progressive Era.
- Course Pack: James Scott, *Seeing Like a State*, ch. 1, pp. 11-22, 33-37.
- Jacoby, *Crimes Against Nature*, ch. 3, pp. 48-78.
- Course Pack: Mineral Leasing Act, 1920; Weeks Act, 1911.

- **Midterm Exam, Tues., Feb. 24**.

II. Modern Environmental Law in the U.S.

Week 6, Feb. 26. From the New Deal to Post-War Environmentalism.
- Course Pack: Samuel Hays, "From Conservation to Environmentalism," pp. 144-52.
- Course Pack: Administrative Procedure Act (1946) & Freedom of Information Act (1966).

Week 7, Tues.-Thur., March 3-5. The 'Golden Age' of Environmental Law.
- Course Pack: Andrews, *Managing the Environment*, ch. 12, pp. 227-54.

- Course Pack: The Wilderness Act, 1964.

Week 8, March 10-12. The Green State, Gridlock, & Green Drift.
- Klyza & Sousa, *American Environmental Policy*, ch. 1-2, pp. 1-42.
- **Paper Proposals Due: March 12.**

Week 9, March 17-19. Congress in an Era of Gridlock: Alternative Legislative Methods.
- Klyza & Sousa, *American Environmental Policy*, ch. 3, pp. 43-89.

Week 10, March 24-26. Executive Rule-Making.
- Klyza & Sousa, *American Environmental Policy*, ch. 4, pp. 91-139.
- Course Pack: Judith Layzer, *The Environmental Case*, ch. 9, "Crisis and Recovery in the New England Fisheries," pp. 240-69.

Spring Break, March 30 – April 3.

Week 11, April 7-9. Courts, Litigation, & Negotiation.
- Klyza & Sousa, *American Environmental Policy*, ch. 5-6, pp. 141-95.

Week 12, April 14-16. The Role of the States in the Federal System.
- Klyza & Sousa, *American Environmental Policy*, ch. 7, pp. 227-62.

III. International Law

Week 13, April 21-23. The Rise of Global Environmental Governance (Focus: Oceans).
- Speth & Haas, *Global Environmental Governance*, ch. 1-3, pp. 1-20, 44-61.
- Course Pack: Susan Buck, *The Global Commons*, ch. 4, "The Oceans," pp. 75-102.

Week 14, April 28-30. The Framework & Principles of International Environmental Law.
- Speth & Haas, *Global Environmental Governance*, ch. 3, pp. 61-81.
- **Paper Due: April 28.**

Week 15, May 5-7. International Environmental Law: Assessment & Prospects.
- Speth & Haas, *Global Environmental Governance*, ch. 4-6, pp. 82-127.

Final Exam: Sunday, May 10, 7:45 – 9:45 a.m.